

BEFORE THE IDAHO BOARD OF TAX APPEALS

IN THE MATTER OF THE APPEAL OF KOOTENAI) APPEAL NO. 07-A-2577
COUNTY ASSESSOR from the decision of the) FINAL DECISION
Board of Equalization of Kootenai County for tax) AND ORDER
year 2007.)

COMMERCIAL PROPERTY APPEAL

THIS MATTER came on for hearing November 27, 2007 in Coeur d'Alene, Idaho before Board Member Linda S. Pike. Board Members Lyle R. Cobbs and David E. Kinghorn participated in this decision. Appellant-Assessor Michael McDowell was present at hearing. Also present from the County were Deputy Assessor Rodney Brow and Civil Attorney Patrick Braden. The property owner, Lobo Lodge, Inc., as Respondent was represented by Attorney John F. Magnuson and Dennis O'Brien, Corporate Secretary. This appeal is taken from a decision of the Kootenai County Board of Equalization (BOE) modifying taxpayer's original protest of valuation for taxing purposes of property described as Parcel No. C5750001001A.

The issue on appeal is the January 1, 2007 market value of a commercial retail property.

The decision of the Kootenai County Board of Equalization is reversed.

FINDINGS OF FACT

The BOE assessed land value is \$2,539,228, and the improvements' valuation was reduced to \$1,730,772, totaling \$4,270,000. The Assessor requests the land value remain at \$2,539,228, and the improvements' value be increased to the original assessment of \$2,556,396, totaling \$5,095,624.

The subject property is 7.66 acres improved with a 92,406 square foot retail building. The original construction was completed in 1978 for Kmart (Big K) who as the lessee entered into a long-term lease with several renewal options. At present, the property is still leased to Big K who

is anticipated to continue to renew the lease under the 5-year options. The lease currently generates about \$267,000 a year, or less than half the property's potential market rent discussed below.

The Assessor presented the following appraisal approaches to value on subject. Also considered were comparable sales of large discount retail properties. Subject's actual and functional use was determined to be as a "discount retail store." The comparables considered were the same type of properties.

<u>Approach</u>	<u>Land</u>	<u>Building</u>	<u>Total</u>
Cost	\$2,539,228	\$2,813,892	\$5,353,120
Income	\$2,539,228	\$2,556,396	\$5,095,624

The cost approach was considered most relevant in the valuation of newer property. The income approach was considered the most indicative of subject's current market value. In the income approach, the Assessor looked at comparable properties to determine market rent for subject of \$665,328. Subject's lease dating to 1977 was noted to be well below current market rents.

The Assessor explained subject was to be assessed in fee simple ownership. IDAPA 35.01.03.217.01.a. The rule specifically provides "The assessor shall value the full market value of the entire fee simple interest of property for taxation. Statutory exemptions shall be subtracted." To consider the fee simple interest and market value standards was argued to require the use of market rent in the income approach. Appellant cited the administrative rule again which holds appraisal "techniques using the income approach to determine the market value . . . of income producing properties . . . must use market rent, not contract rent." IDAPA 35.01.03.217.03.a. Also cited in connection with using "market" data versus subject property

“actuals” in the income approach was the *Senator* case. *The Senator, Inc. v. Ada County*, 138 Idaho 566, 67 P.3d 45 (2003).

The Assessor contended the question of market rent versus contract rent was at the heart of the parties disparate valuations of subject. It was noted the property owner had not raised any challenge to the land value or capitalization rate or other factors considered in subject's 2007 assessment.

Respondent property owner contended a purchaser of the subject property would inherit the lease with Big K and only be able to received the contract rents. It was argued this was the proper income to include in the income approach for taxation purposes. The rents cannot be materially increased for decades if Big K continues in the lease through the full contract term of 2038. In fact, the collected rents have reportedly decreased in recent years.

The original protest of valuation claimed a value for subject property at \$3,800,000, which was close to a stipulated value arrived at in mediation concerning prior years' tax appeals. The value would be closer to \$3,100,000 if subject's actual contract rent was substituted for market rent. Respondent argued a standard in Idaho Code § 63-208 concerning a property's “actual and functional use”, mandates the use of contract rent for assessment purposes. The particular passage in the cited section provides:

The rules promulgated by the state tax commission shall require each assessor to find market value for assessment purposes of all property, except that expressly exempt under chapter 6, title 63, Idaho Code, within his county according to recognized appraisal methods and techniques set forth by the state tax commission; provided, that the actual and functional use [of a property] shall be a major consideration when determining market value for assessment purposes.

The Board notes the rules envisioned by the above language would most match those cited by Appellant-Assessor, i.e. Rule 217. The use of contract rent was also argued to be

correct based on the High Court's law manifested in *Greenfield Village Apartments, L.P. v. Ada County*, 130 Idaho 207, 938 P.2d 1245 (1997).

Respondent agreed it was not contesting land value or capitalization rate or expenses, that the entire issue was the appropriate amount of rent to use in the income approach. The Assessor alternately described the question as how to handle a long-term, below market lease.

There was a second matter raised by Respondent before the BOE which is preserved on appeal. The 2007 assessment notices on subject and some other properties were apparently issued about a week late (Idaho Code § 63-308(1)). See also Section 63-301(1), I.C. The BOE found Respondent was not harmed by the delay and was able to timely appeal. Any timeliness grounds for rejecting the new assessments were thus denied. The matter of the late 2007 assessment notices has been appealed to the District Court.

Respondent did not present any appraisal analysis of subject's current market value. A copy of the Big K lease was submitted and its value case rested on substituting the contract rent for potential market rent. The Assessor contended this action would ignore the taxable "leasehold interest" and only value a portion of the property, namely the "leased fee."

CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support a determination of fair market value. This Board, giving full opportunity for all arguments and having considered all testimony and documentary evidence submitted by the parties in support of their respective positions, hereby enters the following.

The basic premise or assumption in Idaho is that "all property" is taxable. Idaho Code §§ 63-203, 63-602. Respondent claims no exemption. "The property" is properly assessed each year at its current market value. Idaho Code §§ 63-205, 63-201(10), et seq. Property Tax

Administrative Rule 217.01.a makes it clear that “property” be assessed in its full fee simple interest.. The Board holds the Appellant Assessor is correct in discerning this to mean market rent should be used to estimate market value, not “contract rent.”

Idaho’s market value standard clearly holds a property’s value is sought, not the value of an individual ownership, i.e. Respondent’s “leased fee” as landlord. Market value from an appraisal discipline and legal standpoint requires due consideration of market rent. Rule 217.03.a makes this clear. Property is assessed/valued for tax purposes under a hypothetical ownership in fee simple. This has varied practical benefits, but perhaps most importantly, it is the prime basis for uniformity in taxes. Were individual or partial ownerships considered for taxation, or individual management decisions considered controlling such as proposed in the *Senator* case, taxes of “like” properties would be materially different. There is the further difficulty of requiring contract rent consideration where the State Legislature has not required such information be annually reported.

In summary, market value is customarily estimated with attention to market rent. This was the basis for the Assessor’s valuation of subject as an older income producing property. Due consideration was given the property’s “actual and functional use” as a discount retail store. The original assessment was well supported by consideration of the three (3) approaches to value. Subject’s market value in fee simple was reasonably estimated.

On Respondent’s claim for rejecting the original 2007 assessment on notice or timeliness grounds, we concur with the BOE , no harm has been demonstrated. A correct assessment of the subject property must be made. We find insufficient grounds to prevent the County from continuing to advance the originally proposed 2007 assessment.

For the reasons expressed above, the decision of the Kootenai County Board of

Equalization will be reversed. The Assessor's original valuation relying on market rent will be reinstated as correct.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decision of the Kootenai County Board of Equalization concerning the subject parcel be, and the same hereby is, REVERSED increasing the assessed value of the improvements to \$2,556,396. There is no change to the subject land value.

MAILED April 30, 2008